

Decision **DRAFT DECISION OF ALJ O'DONNELL** (Mailed 3/5/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Emergency Application of
FirstWorld Orange Coast (U-5782-C) For
Authority to Transfer Customers and Terminate
Local and Interexchange Services.

Application 01-08-038
(Filed August 24, 2001)

O P I N I O N**I. Summary**

In this application, FirstWorld Orange Coast (Applicant) requests authorization to withdraw from the provision of local exchange and interexchange services, and to transfer its customers to the customer's choice of carrier. Applicant sent misleading notices to its customers that led them to believe that service would be automatically terminated after a specified date. As a result, we find that Applicant effectively withdrew from service without authorization in violation of General Order (GO) 96-A, Section XIV, and Pub. Util. Code § 702. By this order, we approve Applicant's request to withdraw from providing service, and require reparations to customers.

II. Background

In Decision (D.) 97-06-037, the Commission authorized Applicant, a California corporation, to provide facilities-based and resold local exchange and interexchange service. Applicant has provided service since 1998. On August 24, 2001, Applicant filed this application requesting authority to withdraw from providing local exchange and interexchange services. At the

time the application was filed, it had seven customers all of whom were business customers. As of November 14, 2001, all of Applicant's customers had transferred to the carriers of their choice.

III. Representations of Applicant

Applicant says that its local exchange and interexchange operations are unprofitable. Therefore, Applicant requests authorization to withdraw from providing service.

Applicant provided written notice to its affected customers on August 31, 2001. The notice stated that effective September 30, 2001, Applicant would no longer be providing service in the customers' area. Applicant enclosed a list of other providers in the area, and offered its service representatives' help to assist in the transition.

IV. Notices

The notice requirements for transfers of a carrier's customer base were developed in D.97-06-096 for advice letter filings. The requirements are useful as a guide in this proceeding. They are as follows:

1. The notice must be in writing;
2. The carrier must provide the notice to customers no later than 30 days before the proposed transfer;
3. The notice must contain a straightforward description of the transfer, any fees the customer will be expected to pay, a statement of the customer's right to switch to another carrier, and a toll-free number for questions; and
4. The notice and the carrier's description of service to customers must be included in the advice letter.

Applicant provided a copy of its notice with the application. The notice was provided, in writing, more than 30 days before service was to terminate. The notice told customers to take immediate steps to transfer to another carrier, and provided a toll free phone number for questions. The notice stated that it would not charge a fee to transfer the customer to another carrier. The fourth requirement does not apply to the notice itself. Had Applicant been authorized to discontinue service on the date specified in the notice, it may have satisfied the requirements of D.97-06-096. However, this was not the case.

General Order (GO) 96-A, Section XIV, states that “No public utility of a class specified herein shall, unless authority has been obtained from the Commission, either withdraw entirely from public service or withdraw from public service in any portion of the area served.” Therefore, Applicant is required to continue to provide service until its withdrawal from service is approved by the Commission.

Applicant’s notice said that, effective September 30, 2001, Applicant would no longer be providing service in the customers’ area. The notice goes on to say; “On August 24, 2001, FirstWorld filed an application requesting approval from the California Public Utilities Commission to discontinue providing services. FirstWorld’s application is still pending at the Commission.” Applicant’s notice gave the impression that service would be automatically terminated after September 30, 2001. Therefore, we find that Applicant’s customers were misled into changing carriers. As a result, Applicant effectively withdrew from service without authorization in violation of GO 96-A, Section XIV.

Compliance with Commission directives is required of all California public utilities. Pub. Util. Code § 702 says: “Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the

Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.” Therefore, Applicant’s violation of GO 96-A, Section XIV is also a violation of Pub. Util. Code § 702.

V. Restitution to Customers

Applicant asserts that none of its customers was harmed by its actions because all of them transferred to the provider of their choice, and it continued service until the transfers could be completed. However, while the customers in this instance consented to being transferred, the consent was based on Applicant’s misleading notice.

In D.01-06-036, we addressed an application by Verizon Select Services, Inc. (VSSI) to transfer its customer base, and to withdraw from providing local exchange service. We determined that VSSI had sent misleading notices to its customers that led them to believe that service would be automatically terminated after a specified date. The notices technically provided disclosure that the withdrawal was subject to Commission approval, but mistakenly left the impression that service would terminate on a specified date in any event. We imposed no fines, but ordered reparations. This situation is similar. Therefore, we will require Applicant to provide restitution to any customers who were harmed by prematurely switching to another provider.

We will require Applicant to provide written notice to its former customers who switched to another carrier, prior to the effective date of this decision, that they are entitled to request restitution from Applicant. The former customers will be given 20 days following mailing of the notice in which to reply to Applicant. Applicant shall reimburse eligible former customers that respond

to the notice for the difference between what they would have paid Applicant, and what they paid their new carrier for comparable replacement service. If the replacement service is materially different from the service formerly provided by Applicant, the restitution shall be calculated using the new provider's rates for services that most closely equate to the formerly provided services, or the rates the customer actually paid to the new provider, whichever is less.

Applicant's customers could not have been required to switch to a new provider before the effective date of this decision. Therefore, the reimbursement shall cover the period beginning with the date the customer terminated Applicant's service, and ending on the effective date of this decision. In addition, we will require that Applicant file a compliance report with the Commission, within 90 days after the effective date of this decision, confirming its compliance with this decision. The report shall include copies of the required notices and the dates they were mailed. It shall also state the number of former customers who applied for restitution, the number who received restitution, and the total amount of restitution. In addition, if Applicant denies restitution to any customers, it shall state for each denied customer why restitution was denied.

This order should be made effective immediately, so that restitution to the affected customers can be made as soon as possible.

VI. Relinquishing the CPCN

In this application, Applicant asks to relinquish its CPCN to provide local exchange and interexchange service. There is no reason not to do so. Therefore, we will grant the request.

VII. Procedural Matters

In Resolution ALJ 176-3071 dated September 20, 2001, the Commission preliminarily categorized this application as rate setting, and preliminarily

determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

VIII. Comments on the Proposed Decision

The draft decision of the Administrative Law Judge in this matter was mailed to Applicant (there are no other parties) in accordance with Pub. Util. Code § 311(g)(1), and Rule 77.7 of the Commission's Rules of Practice and Procedure.

Findings of Fact

1. The application appeared in the Daily Calendar on September 13, 2001.
2. No protests have been filed.
3. Applicant was authorized in D.97-06-037 to provide facilities-based and resold local exchange and interexchange services.
4. On August 31, 2001, Applicant mailed a notice its customers stating that service would cease on September 30, 2001.
5. The notice requirements in D.97-06-096 for advice letter filings are useful as a guide in this proceeding.
6. Applicant's August 31, 2001 notice did not satisfy the notice requirements in D.97-06-096 because Applicant was not authorized to discontinue service on the date specified in the notice.
7. Pursuant to General Order (GO) 96-A, Section XIV, Applicant is required to continue to provide local exchange service until its withdrawal is approved by the Commission.

8. Applicant's notice indicated that service would be discontinued on the date specified therein, and did not indicate that Applicant may not discontinue service unless and until its request is approved by the Commission.

9. Applicant's violations are similar to Verizon's violations addressed in D.01-06-036 because it sent misleading notices to its customers that led them to believe that service would be automatically terminated after a specified date.

Conclusions of Law

1. A hearing is not necessary.
2. Applicant's notice was misleading.
3. Applicant's customers were misled into transferring to other carriers.
4. Applicant's former customers could not have been required to switch to another carrier prior to the effective date of this decision.
5. Applicant effectively withdrew from providing local exchange service to its customers without the Commission's advance approval in violation of GO 96-A Section XIV, and Pub. Util. Code § 702.
6. Applicant should provide restitution to customers who were harmed by prematurely switching to another carrier.
7. The amount of the restitution to each customer should be the difference between what the customer would have paid Applicant for the services to which he or she subscribed, and the amount he or she actually paid to the new carrier for comparable services.
8. Restitution should be provided for the period beginning when the customer signed on with the new carrier, and ending on the effective date of this decision.

9. Applicant should be ordered to file a report with the Commission, within 90 days after the date Applicant is authorized to terminate service pursuant to this decision, confirming its compliance with this decision.

10. Applicant's CPCN should be revoked after it has fully complied with this decision.

11. This order should be made effective immediately, so that restitution to the affected customers can be made as soon as possible

O R D E R

IT IS ORDERED that:

1. The application of FirstWorld Orange Coast (Applicant) to withdraw from the provision of local exchange and interexchange services is granted to the extent set forth below.

2. Applicant shall provide written notice to its former customers who transferred to another carrier after August 31, 2001 and prior to the effective date of this decision, that they are entitled to request restitution from Applicant.

3. The former customers shall be given 20 days, following the mailing of the notices, in which to reply to Applicant requesting restitution.

4. Applicant shall reimburse the former customers, who transferred to another carrier after August 31, 2001 and who respond to the notice, for the difference between what they would have paid Applicant, and what they paid their new carriers for comparable replacement services.

5. If the replacement service is materially different from the service formerly provided by Applicant, restitution shall be calculated using the new provider's rates for services that most closely equate to the formerly provided services, or the actual rates the customer paid to the new provider, whichever is less.

6. The reimbursement shall cover the period between the date the customer terminated Applicant's service, and the effective date of this decision.

7. Applicant shall file a compliance report in this docket, with a copy to the director of the Commission's Telecommunications Division, within 90 days after the effective date of this decision.

8. The compliance report shall include; (1) copies of the required notices and the dates they were mailed, (2) the number of former customers eligible to claim restitution, (3) the number who applied, (4) the number who received restitution, (5) the total amount of restitution, and (6) an explanation of each instance where a former customer who requested restitution was denied restitution.

9. Applicant shall not accept new customers.

10. Applicant's CPCN to provide local exchange and interexchange service is revoked effective the date Applicant has fully complied with this order.

11. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.